

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

)	
WILLIAM JEWETT, JR.,)	
Petitioner)	
)	
v.)	Civil Action No. 05-11849-GAO
)	
BERNARD BRADY,)	
Respondent)	
)	
)	

PETITIONER’S SUPPLEMENTAL BRIEFING BASED ON DISCOVERY TO DATE

I. INTRODUCTION

Pursuant to the Court’s order, petitioner, William Jewett, Jr., hereby files this supplement, based on the discovery which has been conducted to date, to his previously filed Petitioner’s Memorandum in Support of Petition for *Habeas Corpus* Relief (“Prior Memorandum”), incorporated herein by reference.¹ As set forth in the Prior Memorandum, defendant’s petition raises six grounds on which habeas relief should be granted. Three of those grounds involve the sperm evidence presented at petitioner’s trial. Petitioner was allowed by this Court to take depositions of three witnesses regarding the sperm evidence: State Police Crime Laboratory (“Crime Lab”) chemist, Mary McGilvray (Mary Lumley at the time of the underlying trial herein), Detective Sergeant Richard Craig of the Rockland Police Department (retired), and Attorney Robert L. Jubinville, petitioner’s attorney at the underlying trial.² The information

¹ Petitioner does not waive any issues or arguments presented in his Prior Memorandum, whether or not those issues or arguments are discussed herein.

² Petitioner has moved for two additional depositions in this case, to wit, the depositions of State Trooper Berna and Officer Mike Milligan, formerly of the Weymouth Police Department. Petitioner's motion on this issue is still pending before the Court.

developed in those depositions supports granting the petition.

These three legal issues revolve around the age of the sperm found in the deceased's body and clothes. At trial, the Commonwealth proceeded on the theory that the petitioner raped the deceased after they left a party together, and then killed her shortly thereafter. However, police notes and reports indicate that prior to trial, Ms. McGilvray stated that, contrary to her trial testimony and to the Commonwealth's theory at trial, the sperm was too old to have been left by an assault contemporaneous with the death. At trial she testified that the age of the sperm could not be determined. Defense counsel did not cross-examine on that point.³

II. FACTS DEVELOPED IN DISCOVERY

Two of the police reports that state the sperm significantly pre-dated the time of death were prepared by Detective Craig. June 27, 2008 Deposition of Richard Craig, pp. 8, 11.⁴ Detective Craig's typed report specifically states that he was told by Trooper Scott Berna that the state police laboratory postmortem "did not reveal that [the victim] had been raped, [but] did reveal that she had sex approximately 36 hours or so before death." *Id.*, at 6-8, and Exhibit 5. It further states that the age of the sperm in her panties "indicated she had changed her panties some time after her sexual encounter," and that the body was consistent with her having showered after the encounter. *Id.*, at 7. Detective Craig testified that he had no independent recollection of the conversation with Trooper Berna, but that the report was a true and accurate memorialization of

³ At his deposition, Attorney Jubinville stated he did not recall reviewing the three police reports prior to trial. June 4, 2008 Deposition of Robert L. Jubinville, p. 7. He further stated that he did not recall whether he made a deliberate strategic decision not to raise the age of the sperm as an issue at trial. *Id.*, p. 9. The deposition of Attorney Jubinville is attached hereto as Exhibit 1.

⁴ Cited portions of the deposition of Detective Craig are attached hereto as Exhibit 2. Detective Craig's deposition used the same exhibits as Ms. McGilvray's deposition.

the conversation. *Id.*, at 8. Detective Craig also testified that handwritten notes stating “10:34 a.m. Mary Lumley – Old semen – Night before, may have had sex Th[ursday] or Fri[day] afternoon” were in his handwriting. *Id.*, at 11 and Exhibit 4. Detective Craig could not recall if he made those notes directly from a conversation with Ms. McGilvray. *Id.*, at 12. He believed it might be notes from a conversation with Trooper Berna, but was not certain of that. *Id.*, at 13. He confirmed that the notes meant that he had been told that the semen was from the night before the death. *Id.*, at 14. Detective Craig was unable to identify the third report mentioning the age of the sperm, although he recognized the officer named therein, Mike Milligan, as a Weymouth police officer who worked on this case.⁵ *Id.*, at 9-10. Detective Craig stated that he was informed by the Assistant District Attorney on the case not to believe the information he had received about the age of the sperm. *Id.*, at 14.

Ms. McGilvray stated that she could not recall the conversation or conversations which resulted in Detective Craig’s notes and report. June 3, 2008 Deposition of Mary McGilvray, pp. 53-56.⁶ She did not believe she would have stated a specific age for the sperm, but suggested that it was possible that Trooper Berna spoke to someone else in the Crime Lab. *Id.* She did not have any specific recollection of discussing this case with Trooper Berna at all. *Id.* She stated that the description of the sperm as “old” in Detective Craig’s handwritten notes was one that would be a common interpretation of her description of the sperm. *Id.*

With respect to the third set of notes, apparently prepared by Officer Milligan, Ms. McGilvray did not know anyone of that name and could not recall speaking with him about this

⁵ As noted *supra*, note 2, petitioner’s motion to depose Trooper Berna and Officer Milligan is pending before the Court.

⁶ Cited portions of the deposition of Ms. McGilvray are attached hereto as Exhibit 3.

case. *Id.*, at 46. Officer Milligan's notes were similarly specific that the sperm was deposited prior to death, stating that "sexual contact with victim was approximately 24 to 30 hours prior to death, not less than 24 hours." *Id.* Ms. McGilvray confirmed that these notes were accurate regarding other details included in the notes, such as the inability to non-destructively blood type the semen, but denied that she would have described the age of the sperm in the language used, and could not explain why such specific language would be contained in the notes. *Id.*, pp. 47-52. She stated that she could have discussed the longevity of the sperm, but did not believe she would have used such definitive language. *Id.*

III. APPLICATION TO PETITIONER'S LEGAL ARGUMENT

As set forth in the Prior Memorandum, pp. 8-16, incorporated herein by reference, the failure to present the conflicting evidence regarding the age of the sperm herein resulted in violations of three separate constitutional rights guaranteed to petitioner: 1) his right to due process in the conduct of his trial under the Fifth and Fourteenth Amendments; 2) his right to counsel under the Sixth Amendment; and 3) his right to due process in the conduct of the Grand Jury that issued his indictment under the Fifth and Fourteenth Amendments. The discovery herein confirms that:

1. There was no strategic reason for failing to bring this evidence out at trial;
2. There was significant evidence which could have been, but was not, presented at trial to undercut the Commonwealth's version of the facts; and
3. The police were informed that the information regarding the age of the sperm was not to be considered reliable by the ADA on the case, rather than by any kind of scientific expert.

These facts, in combination with the clear exculpatory nature of the age of the sperm and the

arguments already presented to the Court herein, conclusively demonstrate that petitioner's constitutional rights were violated at his trial, and the petition must be granted.

WILLIAM JEWETT, JR.

By his attorney,

/s/ John H. Cunha Jr.

John H. Cunha Jr.

B.B.O. No. 108580

CUNHA & HOLCOMB, P.C.

One State Street, Suite 500

Boston, MA 02109-3507

617-523-4300

Dated: August 6, 2008

H:\Word\Crim\Jewett\supplemental briefing.wpd

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic filing upon AAG Eva M. Badway, Attorney General's Office, One Ashburton Place, Boston, MA 02108-1698.

/s/ John H. Cunha Jr.

John H. Cunha Jr.

Robert L. Jubinville

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Volume I

Pages 1 to 11

Exhibits 1 to 5

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

C.A. No. 05-11849-GAO

----- X

WILLIAM JEWETT, JR., :

Petitioner, :

:

vs. :

:

BERNARD BRADY, :

Respondent. :

----- X

DEPOSITION OF ROBERT L. JUBINVILLE

Wednesday, June 4, 2008

2:04 p.m. to 2:14 p.m.

Cunha & Holcomb, P.C.

One State Street, Suite 500

Boston, MA 02109-3507

Reporter: Kathleen M. Madden, CSR

Robert L. Jubinville

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A P P E A R A N C E S:

CUNHA & HOLCOMB, P.C.

By John H. Cunha, Jr., Esq., and
Charles Allan Hope, Esq.

One State Street, Suite 500

Boston, MA 02109-3507

617-523-4300

On behalf of the Petitioner

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE ATTORNEY GENERAL

By Eva M. Badway, Esq.

One Ashburton Place

Boston, MA 02108

617-727-2200 Ext. 2824

On behalf of the Respondent

Robert L. Jubinville

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I N D E X

EXAMINATION OF:

ROBERT L. JUBINVILLE

DIRECT

By Mr. Hope

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* * * * *

E X H I B I T S

NO.

PAGE

1 Document entitled "Affidavit of
Myles Jacobson"

5

2 Document entitled "Sworn Statement of
Michael J. Fellows"

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3 Handwritten notes

5

4 Handwritten notes with timeline

5

5 Document entitled "Homicide
Investigation"

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(Exhibits retained by Attorney Cunha)

Robert L. Jubinville

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P R O C E E D I N G S

Stipulation

It is stipulated by and between counsel for the respective parties that the deposition is to be read and signed under the pains and penalties of perjury; and that all objections, except as to form, and motions to strike are reserved to the time of trial.

ROBERT L. JUBINVILLE

a witness called for examination by counsel for the Petitioner, having first been satisfactorily identified and duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOPE:

Q. Can you, please, state your name for the record?

A. Robert Jubinville.

Q. What do you do?

A. I'm a criminal defense lawyer.

Q. How long have you been doing that?

A. This is my 30th year.

Q. Did you represent the Petitioner in this

Robert L. Jubinville

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1 case, William Jewett?

2 A. I did.

3 Q. You were the second trial lawyer in this
4 case; is that correct?

5 A. I don't know that. I think I was the
6 first -- did he have another lawyer before that?

7 Q. I don't think it's actually relevant to any
8 of the stuff we're getting into, but you handled the
9 actual trial in the case?

10 A. I did.

11 Q. And you handled the discovery and pretrial
12 proceedings, to the best of your recollection?

13 A. I did, yes.

14 Q. In preparation for this deposition, you've
15 reviewed some documents that we provided you with?

16 A. Yes, I have documents.

17 (Documents marked as Jubinville
18 Exhibits 1 through 5 for identification)

19 Q. I'm now going to show you briefly the
20 documents that have been marked Exhibits 1 through 5
21 and see if you reviewed all of those in preparing
22 for this deposition.

23 A. (Witness reviews document) Yes, I have
24 reviewed them.

Robert L. Jubinville

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1 Q. In addition, we provided you with the trial
2 transcript of the testimony of Mary McGilvray. Have
3 you had a chance to review --

4 A. I did.

5 Q. In that transcript, Ms. McGilvray talks
6 about sperm -- let's back up. Do you have a
7 recollection of the general facts of the underlying
8 case?

9 A. From reading this, I can see what it says.

10 MR. CUNHA: This being the transcript?

11 A. The transcript, Exhibit --

12 Q. We haven't marked the transcript yet.

13 MR. CUNHA: It's the transcript of the
14 testimony from McGilvray from the trial dated
15 November 19, 1998.

16 FURTHER DIRECT EXAMINATION

17 BY MR. CUNHA:

18 Q. In the course of reviewing discovery, do you
19 recall reviewing the matters that or the documents
20 that have been marked Exhibits 3, 4, and 5 in this
21 deposition?

22 A. Yes.

23 Q. You recall those?

24 A. You sent me those and I reviewed them.

Robert L. Jubinville

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1 Q. Do you recall at the time of your -- first
2 of all, were you appointed by CPCS or were you
3 retained?

4 A. I think I was a retain.

5 Q. Prior to trial, do you recall reviewing
6 these three documents, again marked Exhibits 3, 4,
7 and 5?

8 A. I don't have a memory of that.

9 Q. Is it fair to say then -- well, you don't
10 have a memory of the document. Do you have a memory
11 of any potential issue arising from a description of
12 the sperm as being old?

13 A. I don't have a memory of that as I sit here
14 today one way or the other. I'm not saying I didn't
15 receive and review these. I don't recollect.

16 Q. With respect to the Exhibit 1, which is the
17 affidavit of Myles Jacobson, reference is made in
18 here on the second page of the affidavit in
19 Paragraph 3 in a conversation he had with you on
20 April 9, 2002. That is memorialized in pertinent
21 part in a letter dated April 10, 2002, which is
22 attached to the affidavit. As I understand, you had
23 a chance to review both of those prior to today's
24 deposition?

Robert L. Jubinville

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1 A. Yes.

2 Q. Do you recall a conversation with Attorney
3 Jacobson?

4 A. No. I recall a conversation with him. I
5 don't recall specifically what it is.

6 Q. Is it fair to say, however, that with
7 respect your memory of the matter that we just asked
8 you about, that is whether there was, quote/unquote,
9 old sperm, at least as far as the affidavit is
10 concerned in a letter written to you on April 10,
11 2002, according to Attorney Jacobson, you said at
12 that time you had no memory as well?

13 A. Right.

14 Q. Do you have any recollection as to, at this
15 point, whether you had no memory at the time, just
16 as you have no memory now?

17 A. No, I don't. I don't have -- I didn't have
18 a memory then or now.

19 Q. So that would be the same with respect to
20 the affidavit of Michael J. Fellows, which is marked
21 as Exhibit 2, in which he again refers to a
22 telephone conversation with you on April 10, 2002?

23 A. Right.

24 Q. So you don't recall anything about this as a

Robert L. Jubinville

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1 potential issue?

2 A. I don't, other than what I'm reading here.
3 And you can ask me from it. But do I have a memory
4 of it from back then? No, I don't.

5 Q. So not having a memory of it, you don't know
6 what, if anything, you may or may not have reviewed
7 prior to trial?

8 A. I have no memory at all.

9 Q. You have no memory therefore of whether or
10 not you determined prior to trial to use or not use
11 any such information as a matter of strategy?

12 A. No, I wouldn't remember that.

13 MR. CUNHA: I have no further questions.

14 MS. BADWAY: I have no questions.

15 (Whereupon, the deposition was
16 concluded at 2:14 p.m.)

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Richard Craig

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM JEWETT, JR.,

Petitioner,

vs.

Civil Action
No. 05-11849-GAO

BERNARD BRADY,

Respondent.

DEPOSITION OF: RICHARD CRAIG
DATE: June 27, 2008
TIME: 2:00 p.m.
LOCATION: Offices of
Federal Defender's Office
501 E. McBee Avenue
Greenville, SC 29601

TAKEN BY: Counsel for the Petitioner

REPORTED BY: MICHELE E. BECKER,
Registered Professional Reporter

Richard Craig

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22
23
24
25

Richard Craig

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1 Q State Police Crime Lab came to the
2 scene and did the searching for hairs and all that
3 sort of investigation?

4 A Yes, sir. I believe the Coroner's
5 office also came.

6 Q Do you recall who from either the
7 Crime Lab or the Coroner's Office was there?

8 A I honestly cannot recall, sir.

9 Q All right. But you were there
10 throughout the process as well?

11 A Yes, sir.

12 Q Okay. At some point once the
13 investigation had begun, did you have further
14 contact with the Crime Lab to determine what they
15 learned from their investigation?

16 A No, I did not, sir.

17 Q Do you know -- did you at any point
18 receive information from other parties who had had
19 discussions with the crime lab?

20 A Yes, sir.

21 Q Okay. Do you recall who that was?

22 A I believe it was Trooper Scott Burna
23 who was the lead investigator for the Mass State
24 Police.

25 Q And do you know who the lead

Richard Craig

1 investigator for the Weymouth Police Department was?⁷

2 A Captain Thompson, I believe.

3 Q Okay. And when you spoke to -- you
4 said that Trooper Burna provided you with
5 information about the crime lab results; is that
6 fair?

7 A Yes. It is, sir.

8 Q Okay. And when you spoke to Trooper
9 Burna, what do you recall him telling you about the
10 crime lab results?

11 A Well, from the notes that you sent me,
12 sir, I recall that Trooper Burna -- may I quote?

13 Q Certainly.

14 A He advised me that he learned from the
15 State Police Lab that while the postmortem did not
16 reveal that she had been raped, it did reveal that
17 she had had sex 36 hours or so before death because
18 there were small amounts of sperm deep inside her
19 vagina. The lab also confirmed small deposits of
20 old sperm in her panties which indicated she had
21 changed her panties some time after her sexual
22 encounter. The lack of sperm, et cetera, on her
23 body would be consistent with her having showered as
24 had been reported to us earlier.

25 Q Okay. And that document you're

Richard Craig

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1 reading from is a document I sent you, correct?

2 A Yes, sir. It's Exhibit 5.

3 Q And that's in the McGilvray
4 deposition?

5 A Yes, it is.

6 Q Okay. And that document is the report
7 you prepared; is that correct?

8 A Yes, it is, sir.

9 Q Okay. And when you prepared that
10 report, you were doing your best to make a true and
11 accurate copy of the information you were provided
12 with, correct?

13 A Yes, sir.

14 Q So do you have any independent
15 recollection of the conversation at this time?

16 A No, I don't. I really don't.

17 Q Okay. So your entire memory is based
18 on what you reviewed, is based on the documents you
19 reviewed?

20 A Yes, sir.

21 Q All right. But you would expect that
22 to be a true and accurate recollection, a true and
23 accurate memorialization of your conversation at the
24 time?

25 A Yes, sir.

Richard Craig

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1 Q Okay. Once you received that
2 information from Trooper Burna, did that have any
3 influence on how you proceeded to investigate the
4 case?

5 A No, sir.

6 Q Okay.

7 A We were looking at a number of
8 sources. Jennifer Mullin had a boyfriend. I don't
9 recall his name right now. His nickname was Monk.
10 And we attempted to contact him to see if perhaps he
11 had had a relationship with her.

12 Q So you looked into that possibility?

13 A Yes, sir.

14 Q Did you look into -- do you recall any
15 other possibilities you looked into?

16 A I can't recall at this time, sir.

17 Q Okay. And in addition to the Exhibit
18 5 that we've just referred to, and I also sent you
19 Exhibits 3 and Exhibit 4 from the McGilvray
20 deposition; is that correct?

21 A Yes, you did, sir.

22 Q All right. And with regard to Exhibit
23 3, do you recognize the handwriting on that exhibit
24 at all?

25 A No, I don't, sir. I know that it's

Richard Craig

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not mine.

Q All right. Does the name Mike Milligan mean anything to you?

A Yes. He's a Weymouth police officer.

Q Did you know him at this time that this was happening in 1993?

A No. Any relationship I had with him developed as a result of this case.

Q Okay. Did you interact with him about this case at all?

A No. Not to any great degree.

Q Okay. Did you interact with him after this case?

A No, sir.

Q And that refers to Chemist Mary Lumley?

A Mary Lumley is a State Police chemist, or she was at that time.

Q And did you know her?

A No, sir.

Q Okay. Did you know who she was?

A I knew that she was a State Police chemist. And I understand that she was the one who had done some of the post mortem work on Jennifer's body fluids, I guess.

Richard Craig

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1 Q Okay. But you don't recall meeting
2 her personally or having any conversations with her?

3 A Not that I recall. I'm not saying
4 it's impossible, but not that I recall.

5 Q Okay. And with regard to Exhibit
6 Number 4 in the McGilvray deposition --

7 A Yes.

8 Q -- do you recognize the handwriting on
9 that exhibit?

10 A Yes, sir. That's my handwriting.

11 Q That's your handwriting. All right.
12 And there is a note on that exhibit at
13 10:34 a.m.?

14 A Yes, sir.

15 Q And that's says -- can you just read
16 that to us?

17 A 10:34 a.m. Mary Lumley. Old semen.
18 Night before may have had sex Thursday or Friday
19 afternoon.

20 And I've got the word Curtis with a
21 question mark after it.

22 Q Okay. Do you recall what the word
23 Curtis meant, sir?

24 A I really don't at this point, sir, no.

25 Q Okay.

Richard Craig

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1 A I don't want to conjecture on it
2 because, you know.

3 Q That's fine. Is this note, you said
4 this page is your handwriting, correct?

5 A Yes, sir.

6 Q Can you tell us why it was prepared?

7 A I just tried to keep a running journal
8 so that when I got back to the station I could
9 refresh my memory so I could prepare a more formal
10 report.

11 Q So these are notes that you took in
12 preparation for a report?

13 A Yes, sir.

14 Q Okay. Do you recall now whether you
15 spoke directly to Mary Lumley in making that
16 10:30 a.m. notation?

17 A Sir, I cannot say with certainty that
18 I spoke to her. I can't really say with certainty
19 that I didn't. I really -- it evades me. I'm
20 sorry.

21 Q Do you recall -- do you recall making
22 that notation at all?

23 A I made that notation, yes, sir.

24 Q Okay. Can you -- is it your
25 recollection that when you made that notation that

Richard Craig

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1 that was regarding the Mullin case, correct?

2 A Yes, sir.

3 Q And when you say "old semen," do you
4 recall if that was information you were -- do you
5 recall where you got that information from?

6 A I believe it was a conversation with
7 Trooper Burna, Scott Burna, but I cannot be
8 absolutely certain.

9 Q So you believe this may be referring
10 to the same conversation that's in your typed
11 report?

12 A Yes, sir.

13 Q All right. Rather than to a
14 conversation directly with Ms. Lumley?

15 A Yes, sir. That's correct, sir.

16 Q Okay. Do you know how long after
17 making the handwritten note, your typed report would
18 have been prepared?

19 A I can't say with certainty, sir.
20 Probably within a few days.

21 Q Okay. And after -- on that notation
22 after the "old semen," in parenthesis it says:
23 Night before i.e. may have had sex Thursday or
24 Friday afternoon.

25 When you wrote that down that was

Richard Craig

14

1 because someone, either Ms. Lumley or Mr. Burna, had
2 told you that the semen was from the night before
3 the death, correct?

4 A I believe so, sir.

5 Q Okay.

6 MS. BADWAY: Objection. He has no
7 recollection of talking to Mary Lumley.

8 BY MR. HOPE:

9 Q All right. Is there -- do you have
10 any recollection at this point, Detective Craig, of
11 discovering at some point that this information was
12 incorrect regarding the age of the semen?

13 A Yes, I do recall. I don't remember in
14 what context.

15 Q Do you remember when you discovered
16 that?

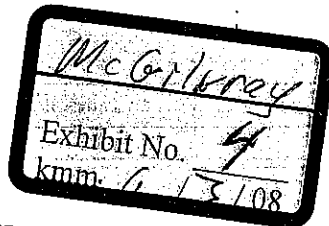
17 A No, sir.

18 Q Do you remember who you discovered
19 that from?

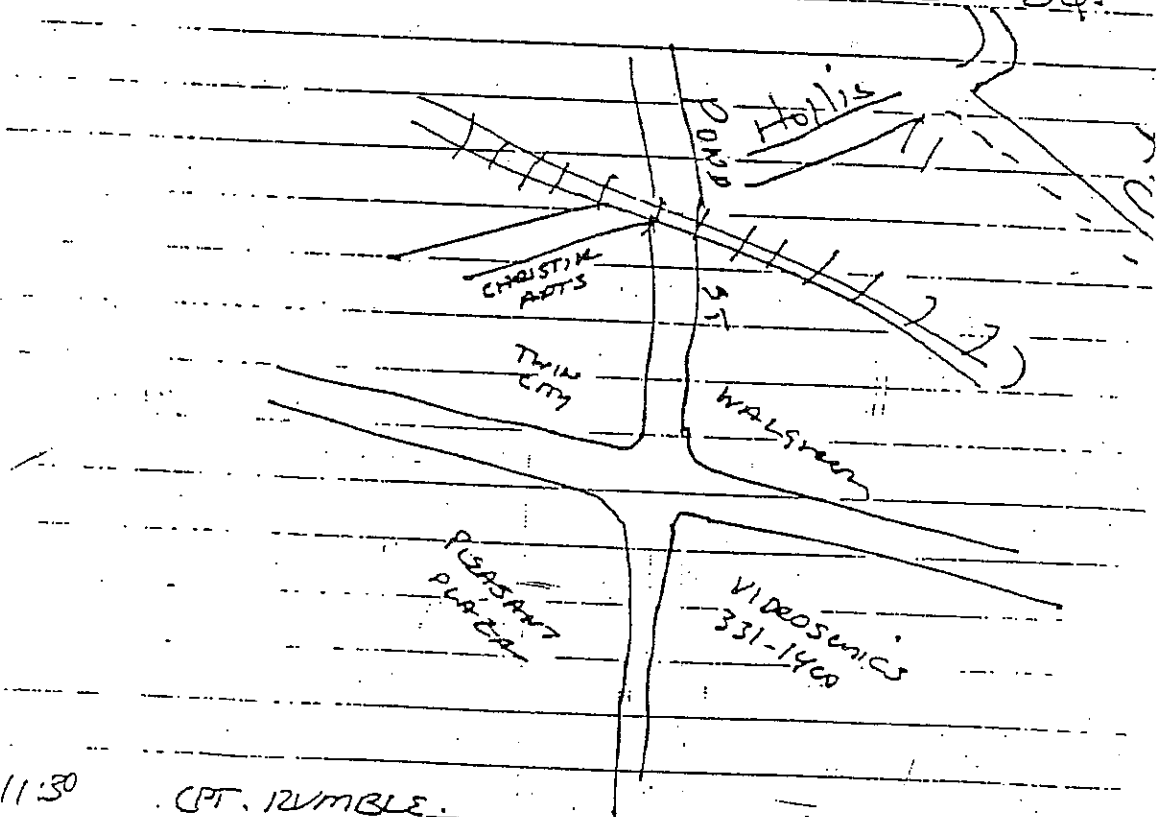
20 A I believe it was from Assistant
21 District Attorney Tara Wright of the Brockton
22 District Attorney's Office.

23 Q And do you recall what ADA Wright told
24 you?

25 A Not off the top of my head, sir, no.



- 10:20^A Checked around 94 High St (Sara's) where boot ran
(183 JG-C / Parked in yard).
- X 10:34^A Mary Lymley - ^{GOLD} Semen - (nite before) 1.8.02
men have had sex Th - Or' Fri. afternoon).
CURTIS: ?
- 10:40 Gave (S13) map of Area.
- 10:45 (S13) Penum L - to ✓ on [redacted] activator's
Th.
- 10:45 396-AFL @ 136 Pind St
(Did murder scene to Boot via
ward etc)
- 11:00^A Rte. 228 to Wey to Shrap to Ralp C
Telbott - up to Columbus Sq.



11:30 CPT. RUMBLE.

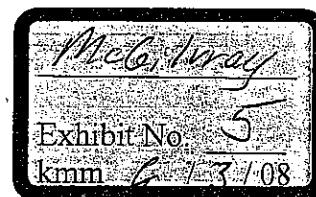
11:40 To Quincy - Terrell St. (St. Anne Ch to
Williston Beh). 55 Fence l. - They might
be related to friend of Mune

HOMICIDE INVESTIGATION
 Rockland Police Department
 Report Number 02-33-01
 Supplement by Det. Sgt. Richard Craig
 05 Feb 93 Friday

11:20am Received call from CPT Rumble, Weymouth PD. He has gotten a call from Kelly Johnston, Hingham. She stated to me that on the morning of 30 JAN 93, at about 6:30 - 6:45am, she got up like she does every Saturday morning, and drove to Weymouth to buy donuts. She said that just after the Weymouth line, as she headed north, she observed a black boot in the middle, on the center line, of High Street. She said that she is reporting this now, as she has just learned more about the "missing" boot from reading the paper.

Her information is:

Kelley Johnston
 103 High Street
 Hingham, Mass.
 740-4369



11:05am Spoke to Off. McCracken, Hingham Police Department. He said they had recently removed guns from the home of a party named

ROBERT W. MROZ
 15 Spruce St.
 Hingham, Mass.
 DOB: 06/04/59

He said this party had recently beaten up his girlfriend, and when he came to reclaim guns which had been taken away from him when she obtained a 209A, he took McCracken aside and stated he'd been a neighbor once of the [redacted] family, and wasn't it ashamed about [redacted]?

McCracken thinks Mroz is kind of strange, and thought that the situation was strange. He watched Mroz leave the station parking lot (It was about 9:00pm) and noted that the car looked like an older, "boxie" looking car, and appeared to be light blue.

11:70am I spoke with

CHERYL SACHETTI
 WEYMOUTH HIGH SCHOOL EMPLOYEE
 340-2580

Last night, Trp. Berna had advised me that he'd learned from the State Police Laboratory that while the post mortem did not reveal that she'd been raped, it did reveal that she'd had sex approximately 36 hours or so before death.

[REDACTED] HOMICIDE INVESTIGATION
Rockland Police Department
Report Number 02-33-01
Supplement by Det. Sgt. Richard Craig
05 Feb 93 Friday

ad

* there were small amounts of sperm deep inside her vagina. The lab also confirmed small deposits of "old" sperm on her panties, which indicated she had changed her panties some time after her sexual encounter. The lack of sperm, etc., on her body would be consistent with her having showered, as had been reported to us earlier.

I was contacting the school to determine Jen Mullins' attendance records, in order to help ascertain when she could have had the opportunity to have had sex prior to her murder, and possibly with whom.

On the phone,

Mary McGilvray

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Exhibits 1 to 5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 05-11649-GAO

----- X

WILLIAM JEWETT, JR., :

Petitioner, :

:

vs. :

:

BERNARD BRADY, :

Respondent. :

----- X

DEPOSITION OF MARY MCGILVRAY

Tuesday, June 3, 2008

9:57 a.m. to 11:35 a.m.

Cunha & Holcomb, P.C.

One State Street, Suite 500

Boston, MA 02109-3507

Reporter: Kathleen M. Madden, CSR

Mary McGilvray

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A P P E A R A N C E S:

CUNHA & HOLCOMB, P.C.

By John H. Cunha, Jr., Esq., and
Charles Allan Hope, Esq.

One State Street, Suite 500

Boston, MA 02109-3507

617-523-4300

On behalf of the Petitioner

OFFICE OF THE ATTORNEY GENERAL

By Eva M. Badway, Esq.

One Ashburton Place

Boston, MA 02108

617-727-2200 Ext. 2824

On behalf of the Respondent

Mary McGilvray

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I N D E X

EXAMINATION OF:

MARY MCGILVRAY

DIRECT

By Mr. Hope 4

* * * * *

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(Exhibits retained by Attorney Cunha)

Mary McGilvray

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1 Q. Do you have any recollection of having
2 conversations with officers about this case?

3 A. The only conversation I remember is as we
4 prepared for trial. I don't have a specific memory
5 of any conversations prior to that.

6 FURTHER DIRECT EXAMINATION

7 BY MR. CUNHA:

8 Q. With respect to the information that is in
9 this note, for instance, it says, "Blood typing and
10 semen sample is not possible due to the size and
11 lack of certain chemical properties," is that
12 accurate?

13 A. It would be destructive, yes, in totality --

14 Q. I hadn't finished reading it, but it says,
15 Lack of certain chemical properties to attempt such
16 a trial would result in destruction of the sample.
17 Is that accurate?

18 A. The part about the chemical properties is
19 not accurate. The part blood typing of the semen
20 sample, I would say would not be recommended due to
21 the fact that it would destroy the sample. That
22 would be an accurate statement.

23 Q. It is accurate, also, the next sentence that
24 says "It is DNA viable" --

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1 MS. BADWAY: Excuse me. She didn't say
2 it was accurate. You said it is also accurate.

3 Q. With respect to the next sentence, which
4 says "DNA viable should we want to do that," is that
5 accurate?

6 A. Yes.

7 Q. In fact, DNA testing was done on this
8 sample?

9 A. Yes.

10 Q. With respect to the information that's
11 contained in the first part, that is, "sexual
12 contact with the victim was approximately 24 to 30
13 hours prior to death, not less than 24 hours," is
14 that accurate?

15 A. Not in my opinion.

16 Q. Do you have any information as to where that
17 information came from? You will agree that it seems
18 to say "FM, from chemist Mary Lumley"?

19 A. I can't really make out that first part, but
20 it does seem to be a note indicating --

21 Q. A conversation with you?

22 A. Or information about me or from me.

23 Q. With respect to the information contained in
24 this first sentence, again, do you have any idea why

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1 an officer would write that as coming from you, that
2 information as coming from you?

3 A. I do not know why a person would write those
4 notes in his notes.

5 Q. Have you ever provided such information in
6 any case?

7 A. I've never provided information like that in
8 a definitive way, absolutely not.

9 Q. What do you mean by a "definitive way"?

10 A. Oftentimes, as a scientist, I do engage in
11 discussions with people about the longevity of sperm
12 or how long you might expect to find sperm in a
13 vaginal cavity after an event happens, those are in
14 no way intended to be interpreted as a definitive
15 result in a case. This is information that's out
16 there in the literature that somebody could
17 reference if they wanted to see how long sperm could
18 be detected in the vaginal cavity.

19 Q. When you say "in the literature," what
20 literature are you referring to?

21 A. There are scientific journals that publish
22 research about those sorts of things. I don't know
23 offhand the name of one that would have this sort of
24 information in it; however, a common forensic

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1 journal is a journal of forensic science.

2 Q. Did you consult any such journals prior to
3 your testimony today?

4 A. No.

5 Q. Do you recall if you consulted any such
6 journals prior to or around the time of your
7 examination of the vaginal swabs and smears in this
8 case, that is in 1993?

9 A. No, I wouldn't have consulted journals in
10 relation to this case, no.

11 Q. So do I understand your testimony to be that
12 in speaking to an officer, you might say that
13 something is consistent with a certain time period
14 but it is not scientifically definitive?

15 A. No, absolutely not, absolutely not correct.

16 Q. So if this were to be attributed to you by
17 him -- I'm asking you to assume that -- he would
18 have had to have made up that first sentence?

19 A. No. He would have had to taken information
20 out of context and interpreted it in his own way to
21 put in his own notations for his own use. It
22 wouldn't have been a result from me, because my
23 results are contained in that report that comes from
24 the laboratory. So I can't explain why somebody

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1 would write something in their notes as being
2 factual. But I can say, as a scientist, I do try to
3 discuss scientific information with laypeople who
4 might not understand everything that I'm trying to
5 say and what's factual and what's just theoretical.

6 Q. You will agree with me that the information
7 in that first paragraph is pretty specific. That
8 is, that there is a time limit of a six-hour span,
9 that is 24 to 30 hours prior to death?

10 A. That is very specific, yes.

11 Q. And not less than 24 hours is even more
12 specific?

13 A. That's correct.

14 Q. Can you tell us what the context would be
15 for such specificity --

16 MS. BADWAY: She can't surmise.

17 MR. CUNHA: I'm asking the question, and
18 she can answer however she wishes. Whatever
19 evidentiary value it has is up to the judge.

20 Q. Can you tell us what is the context by which
21 information you give would have such specificity?

22 A. I can't, because I wouldn't give such
23 specific information. There is no way I can
24 scientifically give such a specific answer related

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1 to any piece of evidence. That would be impossible
2 for me to do.

3 Q. So, assuming, again, that this is a note
4 from the officer relating in conversation with you,
5 with respect to the specificity, that is the 24 to
6 30 hours and the not less than 24 hours, that would
7 have had to have been made up by him?

8 A. Conversations go two ways, so I'm telling
9 you I did not provide that information with such
10 specificity to be placed in a note like that.
11 Absolutely not.

12 Q. I understand what you're saying. What I'm
13 trying to determine is, what context could there be
14 that would have such numbers that would be
15 misinterpreted or -- if he didn't make it up, what
16 is the context in which that could appear in a
17 conversation with you whether it's misunderstood or
18 not?

19 A. If you ask me a question, a very specific
20 question and I answer you, there's a possibility
21 that you don't hear my answer. All you hear is your
22 question. I don't know if that happened in this
23 situation. I can't say why he wrote that down.
24 That's not my answer. That might have been his

Mary McGilvray

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1 question, but that is not my answer.

2 FURTHER DIRECT EXAMINATION

3 BY MR. HOPE:

4 Q. Let's go to the next one. This has been
5 marked Exhibit 4. It's also from one of the
6 materials you've reviewed in preparing for this; is
7 that correct?

8 A. Yes.

9 Q. Drawing your attention to the starred
10 section, there's a number of dated notes. Can you
11 just read the note that's at 10:34 a.m.

12 A. That note says, Mary Lumley, old semen. In
13 parentheses then it says, Night before, i.e., may
14 have had sex TH or FRI afternoon. Then it says
15 Curtis question mark.

16 Q. This doesn't actually specify which officer
17 it came from, but do you recall having a
18 conversation about in which you might have described
19 the semen as old semen with an officer in this case?

20 A. I don't recall having this conversation, but
21 as I've described in relation to the sperm cells in
22 this case, being head and having no tails, then it
23 wouldn't be uncommon for somebody to interpret my
24 explanation of recent versus nonrecent as being old

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1 semen, so this notation potentially could have been
2 attributed to a conversation I had with this person;
3 however, I don't have any recollection of this
4 conversation.

5 Q. And with regard to the portion in the
6 parentheses, Night before may have had sex TH --
7 let's assume that means Thursday or FRI, Friday
8 afternoon -- might you have said something that
9 would have attributable to that?

10 A. I have no recollection of that, but I don't
11 think I would have said anything like that. And in
12 fact I interpret this notation as being a notation
13 that's separate from the conversation type notation
14 that this might be the person's own thoughts that
15 they are putting into this notation.

16 Q. Does the name Curtis mean anything to you in
17 the context of this case?

18 A. It does not.

19 FURTHER DIRECT EXAMINATION

20 BY MR. CUNHA:

21 Q. Do you know Dr. Curtis, the pathologist?

22 A. No. I might have seen the name on documents
23 that came to the lab, but I don't even recall that.

24 Q. Do you ever speak to the pathologist in a

Mary McGilvray

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1 case?

2 A. No.

3 FURTHER DIRECT EXAMINATION

4 BY MR. HOPE:

5 Q. Moving on to Exhibit 5. This is something
6 you reviewed prior to this deposition. If I can
7 draw your attention to the starred paragraph at the
8 bottom of Page 1 of this two-page exhibit and then
9 continuing on to the second page. Can you just read
10 that paragraph for us.

11 A. Yes. "Last night Trooper Berna had advised
12 me that he learned the state police laboratory that
13 while the postmortem did not reveal that she had
14 been raped, it did reveal that she had sex
15 approximately 36 hours or so before death because
16 there were small amounts of sperm deep inside her
17 vagina. The lab also confirmed small deposits of,
18 quote/underquote, old sperm on her panties which
19 indicated she had changed her panties sometime after
20 her sexual encounter. The lack of sperm, et cetera,
21 on her body would be consistent with her having
22 showered as had been reported to us earlier."

23 Q. would the -- the state police laboratory is
24 where you work, correct?

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1 A. That's correct.

2 Q. Would there have been anyone else at the
3 state police laboratory working on this case that
4 the trooper might have spoken with?

5 A. I don't know. I was the only one working on
6 the case, but I don't know if he would have spoken
7 to anybody else about the case.

8 FURTHER DIRECT EXAMINATION

9 BY MR. CUNHA:

10 Q. Do you know Trooper Berna?

11 A. Yes, I know him. I don't know him now. I
12 wouldn't recognize him if I saw him now, but I had
13 met him back at the time of this case, yes.

14 FURTHER DIRECT EXAMINATION

15 BY MR. HOPE:

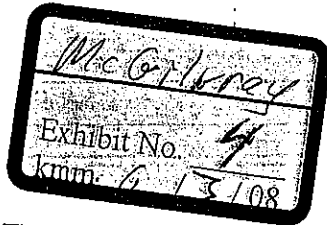
16 Q. Do you have any recollection of having a
17 conversation with him about this case?

18 A. No specific recollection, no.

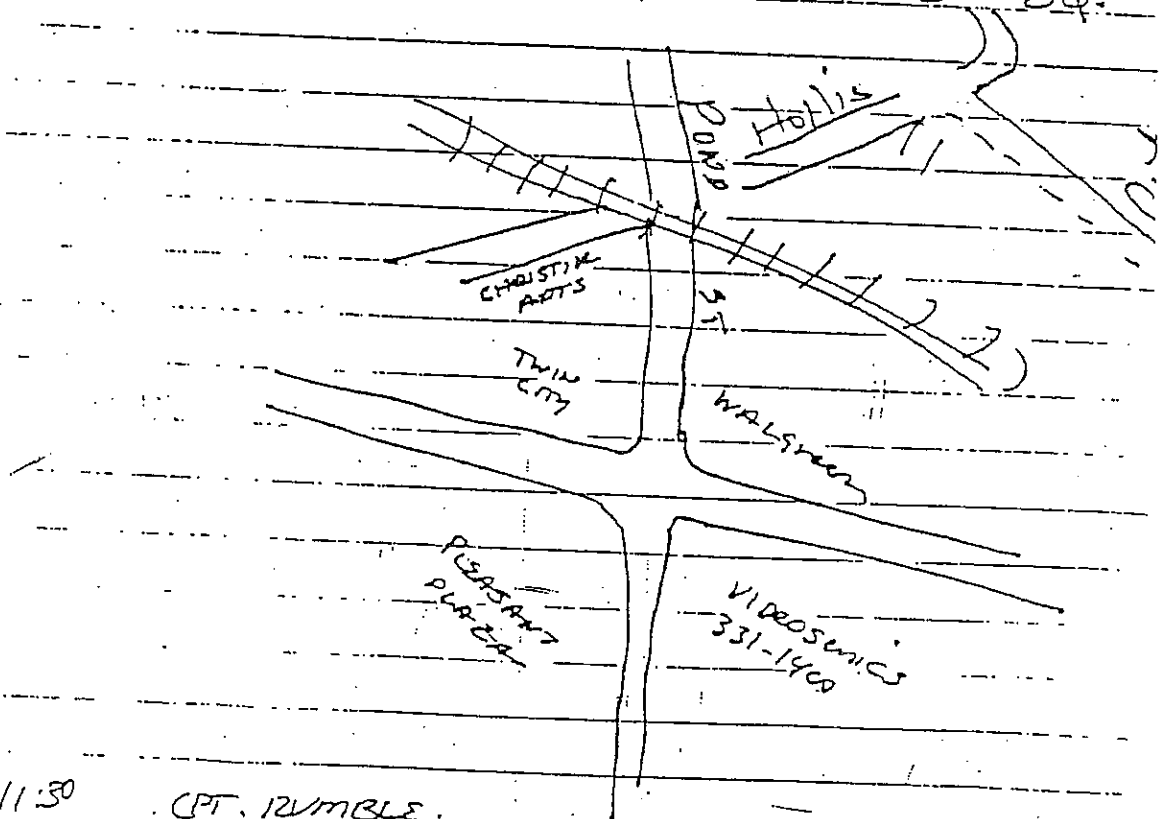
19 Q. Again, just briefly, we've only spoken so
20 far about the sperm collected from the hospital
21 specimen kit in this case, correct?

22 A. That's correct.

23 Q. There was actually a second site from which
24 sperm was located, correct, from the panties?



- 10:20^A Checked around 94 High St. (Gonzalez's) where look for
(183-J6-C / Parked in yard).
- 10:34^A Mary Lymley - ^{SOLD} Semen - (nite before, i.e.,
may have had sex Th - Or Fri. afternoon).
CURTIS: ?
- 10:40 Gave SR3 map of area.
- 10:45 SR3 Penum L - to ✓ on [redacted] activate's
Th.
- 10:45 396-AFL @ 136 Pine St.
(Did murder scene to BOOT VIA
WARD ETC)
- 11:00^A Rte. 228 to Way to Sharp to Relp's
Telbott - up to Columbus Sq.



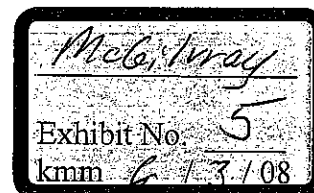
- 11:30 CPT. RUMBLE.
- 11:40 To Quirey - Fenell St. (St. Anne Ch to
Willeston Beh) - 55 Fenell - They might
be related to friend of Muma

██████████ HOMICIDE INVESTIGATION
 Rockland Police Department
 Report Number 02-33-01
 Supplement by Det. Sgt. Richard Craig
 05 Feb 93 Friday

11:20am Received call from CPT Rumble, Weymouth PD. He has gotten a call from Kelly Johnston, Hingham. She stated to me that on the morning of 30 JAN 93, at about 6:30 - 6:45am, she got up like she does every Saturday morning, and drove to Weymouth to buy donuts. She said that just after the Weymouth line, as she headed north, she observed a black boot in the middle, on the center line, of High Street. She said that she is reporting this now, as she has just learned more about the "missing" boot from reading the paper.

Her information is:

Kelley Johnston
 103 High Street
 Hingham, Mass.
 740-4369



11:05am Spoke to Off. McCracken, Hingham Police Department. He said they had recently removed guns from the home of a party named

ROBERT W. MROZ
 15 Spruce St.
 Hingham, Mass.
 DOB: 06/04/59

He said this party had recently beaten up his girlfriend, and when he came to reclaim guns which had been taken away from him when she obtained a 209A, he took McCracken aside and stated he'd been a neighbor once of the ██████████ family, and wasn't it ashamed about ██████████?

McCracken thinks Mroz is kind of strange, and thought that the situation was strange. He watched Mroz leave the station parking lot (It was about 9:00pm) and noted that the car looked like an older, "boxie" looking car, and appeared to be light blue.

11:10am I spoke with

CHERYL SACHETTI
 WEYMOUTH HIGH SCHOOL EMPLOYEE
 340-2580

* Last night, Trp. Berna had advised me that he'd learned from the State Police Laboratory that while the post mortem did not reveal that she'd been raped, it did reveal that she'd had sex approximately 36 hours or so before death.

[REDACTED] HOMICIDE INVESTIGATION
Rockland Police Department
Report Number 02-33-01
Supplement by Det. Sgt. Richard Craig
05 Feb 93 Friday

Go

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I was contacting the school to determine Jen Mullins' attendance records, in order to help ascertain when she could have had the opportunity to have had sex prior to her murder, and possibly with whom.

On the phone,